IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No. 2034 of 2006
Date of decision: February 22,2007

Gurdeep Singh V. Surmukh Singh and another

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Gurcharan Dass,Advocate, for the appellant.

Viney Mittal,J.

Plaintiff has lost concurrently before two courts below in his suit for separate possession by way of partition and for permanent injunction. He is in second appeal.

Plaintiff filed the suit in question claiming that the father of the plaintiff and defendant No.1,Surmukh Singh, owned three plots, X, Y and Z. Bahadur Singh had three sons i.e. plaintiff, defendant No.1 and one Tarlochan Singh, who had died leaving behind defendant No.2, Gurdev Kaur, as his widow. Bahadur Singh had died in the year 1977. It was alleged by the plaintiff that three plots had been partitioned between three brothers. Plot 'X' came to the share of defendant No.1,Surmukh Singh, and plot 'Y' came to the share of the plaintiff and both of them had raised construction. Plot 'Z' fell to the share of Tarlochan Singh who died in the year 1992. His widow, Gurdev Kaur, thereafter remarried with another person named, Surmukh Singh. According to the plaintiff Bahadur Singh had executed a Will dated August 4,1991, giving equal share of the three plots to his three sons but with a stipulation that if any one of the sons died, then the remaining survivors would share his plot in equal share. Consequently, the plaintiff claimed that on the death of Tarlochan Singh, defendant No.2, Gurdev Kaur, had no right to the

plot 'Z' which was liable to be shared by the plaintiff and defendant No.1. Plaintiff also claimed that there was a tubewell which was joint between the parties and the plaintiff was entitled to use the said tubewell without any hindrance from the defendants.

Suit was contested by the defendants. They had admitted relationship between the parties. It was maintained that Bahadur Singh, having died in the year 1977, his estate was inherited by his three sons in equal shares and having acquired plot 'Z' by way of inheritance, n his death, defendant No.2 Gurdev Kaur succeeded to the estate left behind by Tarlochan Singh and as such acquired title of plot 'Z'. Defendants also maintained that Surmukh had applied for electric connection and he was exclusive owner of the said tubewell as well as electric connection.

The trial court held that as per the Will dated August 4,1971 executed by Bahadur Singh, the three plots were to be inherited in equal shares by his three sons and Tarlochan Singh had inherited plot 'Z' on the death of Bahadur Singh. The trial court also held that latter on Tarlochan Singh having died, the said plot was duly inherited by his widow Gurdev Kaur and in those circumstances, the Will dated August 4,1971 had no operation. However, the trial court held that tubewell and connection was joint between the parties ,therefore, even the plaintiff was entitled to use the same. Consequently, the suit filed by the plaintiff for separate possession by way of partition was dismissed but he was held entitled to use the tubewell in question.

The plaintiff as well as defendant No.1 took up the matter in appeals. All the findings of fact recorded by the trial court were affirmed in appeal by the first appellate court also. The first appellate Court again held that the stipulation in the Will with regard

to the death of any of the sons of Bahadur Singh was only to operate if any one of the sons of Bahadur Singh had pre-deceased him but since Tarlochan Singh had died much after the death of his father, Bahadur Singh, therefore, on the death of Bahadur Singh all the three sons succeeded to the property as per the Will. The finding of trial court with regard to jointness of tubewell was also affirmed. In these circumstances, the appeals filed by the plaintiff and defendant No.1 were also dismissed.

Nothing has been shown that the findings recorded by the two Courts below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

February 22,2007 (Viney Mittal)
sks Judge